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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,537	07/28/2006	Bernardus Hendrikus Hendriks	NLO40290	2433
24737 7590 11/03/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
SCHWARTZ, JORDAN MARC				
ART UNIT		PAPER NUMBER		
2873				
MAIL DATE		DELIVERY MODE		
11/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/597,537

Applicant(s)

HENDRIKS ET AL.

Examiner

Jordan M. Schwartz

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copies have been filed in parent Application No. PCT/IB2005/050289, filed on January 25, 2005.

Duplicate Claims

Applicant is advised that should claim 6 be found allowable, claim 8 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicant is advised that should claim 7 be found allowable, claim 9 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Kuiper et al publication number 2006/0028734.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Kuiper'734 reads on these claims by disclosing the limitations therein including the following: an optical system comprising a first lens group (Figure 7, all of the elements and fluids on the object side from element "72" to and including the stop "80"); a second lens group (Figure 7, all of the elements and fluids on the image side of the stop "80"); and a stop (Figure 7, "80"); a chamber having an entrance and an exit window and an optical axis extending longitudinally through (Figure 7, paragraph 0083, such as element "72" as the "entrance window" and element "78" as the exit window or element "78" as the "entrance window" and element "74" as the "exit window"); the chamber comprising first and second fluids in contact over a meniscus extending transverse the optical axis and the fluids being immiscible (Figure 7, paragraphs 0029, 0066, 0083-0084, fluids "A" and "B"); the chamber further comprising electrodes to vary

the shape of the meniscus depending on the voltage (paragraph 0071); at least one of the "entrance window" or "exit window" comprising a surface in contact with one of the fluids with the surface having a curvature (Figure 7, a surface of lenses "72" and "74" in contact with fluid "B"). The curvature will inherently have the same sign as the curvature of the meniscus this being reasonably based upon Kuiper'734 showing one meniscus having a positive sign (such as the menisci at interfaces "63" "67" and "68" and another meniscus having a curvature of a negative sign (such as the meniscus at interface "64") and therefore the contact surface of lens "72" and/or lens "74" will inherently have the same sign as one of these menisci. Kuiper'734 further discloses one of the windows made of a material having a substantially different Abbe number than the contacting fluid (paragraphs 0003, 0066 which discloses lenses "72" and "74" as glass or plastic and fluid "B" as an aqueous salt solution); the first lens group on the object side and comprising a chamber, the second lens group on the image side and a stop between (Figure 7); the stop attached to the first lens group at the side of the image space (Figure 7); the stop integrated in the first lens group (Figure 7 with the stop and all liquids and elements on the object side of it being considered as the "first lens group"); an optical device comprising the lens system and specifically a mobile phone (paragraph 0004).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeyama et al patent number 7,043,153

Takeyama'153 discloses the limitations therein including the following: an optical system comprising a first lens group (Figure 1A, "5"); a second lens group (Figure 1A, "6"); and a stop (Figure 1A, "4"); a chamber having an entrance and an exit window and an optical axis extending longitudinally through (Figure 1A, abstract, column 4, lines 44-54, element "5" having the chamber with "15" and "16" as the "entrance window" and "exit window"); the chamber comprising first and second fluids in contact over a meniscus extending transverse the optical axis and the fluids being immiscible (Figure 1A, column 4, lines 44-54); at least one of the "entrance window" or "exit window" comprising a surface in contact with one of the fluids (Figure 1A); the surface having a curvature (column 9, lines 1-4). It is believed that one of the windows will inherently be made of a material having a substantially different Abbe number than that of the contacting fluid this being reasonably based upon Takeyama'153 disclosing the two liquids as immiscible liquids which are generally an oil and a water (column 4, lines 44-54) and disclosing the windows made out of a glass material column 4, line 65 to column 5, line 3). Takeyama'153 further discloses the first lens group on the object side and comprising a chamber, the second lens group on the image side and the stop integrated in the first lens group (Figure 1A with "5" as the object side group and "6" as the image side group); and an optical device comprising the lens system and specifically a mobile phone (column 2, line 33).

Takeyama'153 discloses as is set forth above but does not specifically disclose if the sign of the curvature of the window and that of the meniscus without a voltage are the same. However, the curvature of the window will inherently be either positive or negative and therefore there are only two possibilities for the signs to be the same. It has been held that where there are only a finite number of predictable identifiable solutions, it would have been obvious to a person of ordinary skill in the art to try the known options within his or her technical grasp. *KSR International Co. v Teleflex Inc.*, 82 USPQ2d 1385 (2007). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the signs of the surfaces as the same since this would involve only two possible solutions and since it has been held that where there are only a finite number of predictable identifiable solutions, it would have been obvious to a person of ordinary skill in the art to try the known options within his or her technical grasp for the purpose of providing the desired optical power.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuboi et al publication number 2001/0017985.

Tsuboi discloses the limitations therein including the following: an optical system comprising a first lens group (Figure 11, group "1"); a second lens group (Figure 11, group 2); having a chamber filled having an entrance and an exit window and an optical axis extending longitudinally through (Figures 7 and 10, paragraphs 0082-0086); the chamber comprising first and second fluids in contact over a meniscus extending transverse the optical axis and the fluids being immiscible (abstract, paragraphs 0082-0086, Figures 7 and 10); the chamber further comprising electrodes to vary the shape of

the meniscus depending on the voltage (paragraphs 0082-0086); at least one of the "entrance window" or "exit window" comprising a surface in contact with one of the fluids with the surface having a curvature (Figures 1A and 10, the interior surfaces of container "7" in contact with the fluids and disclosing these surface having a curvature as per Figure 10); the curvature having the same sign as that of the meniscus without a voltage being applied (Figures 10A-10C such as the image side window surface of "9" having the same sign as the meniscus for all of the voltage changes); one of the windows made of a material having a substantially different Abbe number than the contacting fluid (paragraph 0044, 0048-0049); the first lens group on the object side and comprising a chamber, the second lens group on the image side (Figure 11); an optical device comprising the lens system (paragraph 0004).

Tsuboi discloses as is set forth above including disclosing the lens system as a plus, minus zoom lens system (Figure 11) but does not specifically disclose the system comprising a stop and further with the stop between the first and second lens groups integrated with the first group. However, the examiner takes Judicial Notice that it is well known in the art of zoom lens systems, such as plus, minus zoom lens systems to incorporate an aperture stop within the system such as either on the object side of the system or between the lens groups and integrated with the first lens group for the purpose of providing the required light limiting. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the plus minus zoom lens system of Tsuboi as further comprising an aperture stop either on the object side of the system or between the first and second lens groups integrated with

the first group since it is well known in the art of zoom lens systems, such as plus, minus zoom lens systems to incorporate an aperture stop within the system such as either on the object side of the system or between the lens groups and integrated with the first lens group for the purpose of providing the required light limiting. Furthermore the examiner takes Judicial Notice that minus plus zoom lens systems are well known systems in mobile phones for the purpose of providing mobile phones of improved imaging. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the optical device of Tsuboi as a mobile phone since it is well known in the art of zoom lens systems to have a minus plus system within a mobile phone for the purpose of providing mobile phones of improved imaging.

Examiner's Comments

Okada et al patent number 5,153,777 and Enomoto patent number 6,922,290 are being cited herein as evidence of the examiner's Judicial Notice that it is well known in the art of zoom lens systems, such as plus, minus zoom lens systems to incorporate an aperture stop within the system such as either on the object side of the system or between the lens groups and integrated with the first lens group for the purpose of providing the required light limiting. Kaneko patent number 6,836,376 is being cited herein as evidence of the examiner's Judicial Notice that minus plus zoom lens systems are well known systems in mobile phones for the purpose of providing mobile phones of improved imaging.

Nagaoka et al patent number 6,934,090 is being cited herein as another optical device that would have made obvious a number of the above rejected claims, however, such rejections would have been repetitive.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan M. Schwartz whose telephone number is 571-272-2337. The examiner can normally be reached on Monday to Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jordan M. Schwartz
Primary Examiner
Art Unit 2873

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October 30, 2008

/Jordan M. Schwartz/
Primary Examiner, Art Unit 2873